



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Part 395

[Docket No. FMCSA-2017-0298]

Hours of Service of Drivers: Application for Exemption; Motion Picture Association of America

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Application for exemption; request for comments.

SUMMARY: FMCSA announces that the Motion Picture Association of America

(MPAA) has requested an exemption from the electronic logging device (ELD)

requirements for all commercial motor vehicle (CMV) drivers providing transportation to

or from a theatrical or television motion picture production site. MPAA request this

exemption to allow these drivers to complete paper records of duty status (RODS) instead

of using an ELD device. MPAA believes that the exemption would not have any adverse

impacts on operational safety because drivers would remain subject to the hours-of-

service (HOS) regulations as well as the requirements to maintain paper RODS. FMCSA

requests public comment on MPAA's application for exemption.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2017-0298 by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. See the Public Participation and Request for Comments section below for further information.

- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251
- Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Mr. Tom Yager, Chief, FMCSA Driver and Carrier Operations Division;

Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614-942-6477. E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2017-0298), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to www.regulations.gov and put the docket number, "FMCSA-2017-0298" in the "Keyword" box, and click "Search." When the new screen appears, click on "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-

addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

MPAA is requesting an exemption from the ELD requirements in 49 CFR Part 395 published in the **Federal Register** on December 16, 2015 (80 FR 78292). If granted,

the exemption would allow all drivers of CMVs providing transportation of property to and from a theatrical or television motion picture production site to complete paper RODS instead of using an ELD device on or after the December 18, 2017 compliance date. The term of the requested exemption is for five years, subject to renewal.

MPAA reports that approximately 6,500 CMV drivers operate CMVs on a full or part-time basis for the motion picture industry. According to HOS data developed by third party compliance services, these drivers spend on average less than four hours each day driving and drive about 40 miles per day. Their resulting RODs are often very complex, as are the driver HOS records that employing motor carriers must keep. Through close cooperation, the industry has been able to manage the extensive interchange of paper RODs that this work pattern requires. MPAA asserts that industry's success in HOS management is based on a system that is driver-based rather than vehicle-based.

According to MPAA, few production drivers qualify for the short-haul driver exception in 49 CFR 395.1(e)(1) and (e)(2) and will be subject to the ELD requirements when compliance becomes mandatory. Each time a production driver operates a CMV for a different studio or production company the motor carrier and the driver must reconcile the driver's HOS record for the past week. At present, cooperation between production companies, various Teamsters locals, and drivers can reduce the burden of this detailed reconciliation. And under the current rules, drivers themselves can manage the necessary paper RODS, carry them to each new CMV, and transfer paper copies to each new motor carrier as needed. When a roadside inspection occurs, a driver can produce paper RODS for review by the enforcement official.

MPAA contends that the lack of interoperability among ELD platforms developed by various manufacturers means that motion picture company drivers will not be able to transfer HOS data from one carrier or vehicle to other carriers or vehicles. A driver who is required to use an ELD may operate a CMV that has one operating system installed on the truck. When the driver transfers to operating for another studio or production company, that company may use a different ELD operating system for its vehicles. The HOS data cannot automatically be transferred from the first company's vehicle to the second company's system unless both ELD devices are on the same platform.

MPAA believes that requiring production company drivers to record their HOS using incompatible ELD platforms would prevent them from implementing more efficient or effective operations that would maintain a level of safety equivalent to, or greater than, the level achieved without the requested exemption. Allowing production company drivers to continue using paper RODS to record their HOS data will not jeopardize operational safety or increase fatigue-related crashes.

MPAA states that Congress and FMCSA already recognized the minimal safety concerns presented by motion picture production drivers due to the limited numbers of hours and miles they operate CMVs and the availability of frequent and extended periods of off duty time throughout the workday. As a result production drivers are already exempted from the typical HOS driving and on duty time limits as long as they operate within a 100 air-mile radius of the location where the driver reports to and is released from work.

Because production drivers operate CMVs so few miles and hours per day, motion picture production companies have driver and vehicle out-of-service rates that are

substantially below the national averages for carriers in general. Until such time as all ELD platforms are fully interoperable, motion picture production drivers should be allowed to continue recording their HOS data using paper RODS.

A copy of MPAA's application for exemption is available for review in the docket for this notice.

Issued on: October 23, 2017

Larry W. Minor

Associate Administrator for Policy

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